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November 19, 2012

**VIA ELECTRONIC AND CERTIFIED MAIL**

Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

**Re: MUR 6641—Response of CAPE PAC (Margaret Berardinelli, Treasurer)**

Dear Mr. Herman:

This letter responds to a recent complaint by the Allen West Campaign, which accused CAPE PAC of violating 2 U.S.C. § 441h(b) by “present[ing] itself as ‘acting for or on behalf of [a] candidate ... for the purpose of soliciting contributions.’”<sup>1</sup> Specifically, the West Campaign asserts that CAPE PAC sponsored a website “intentionally designed to blur the line between CAPE PAC and Allen West’s own campaign committee” and that CAPE PAC does “virtually nothing other than fundraise.”<sup>2</sup>

The West Campaign’s sensational accusations are false. CAPE PAC did not violate 2 U.S.C. § 441h(b). In fact, the website intended to support Allen West’s congressional candidacy contained multiple, clear indications that CAPE PAC operates independently from the West Campaign. CAPE PAC has also done much more than fundraise, deploying resources to promote federal candidates during the 2012 election cycle through many online and off-line efforts.

**CAPE PAC’s Website Contained Clear Indications that It was Not the West Campaign’s Site**

Again, the West Campaign accused CAPE PAC of violating 2 U.S.C. § 441h(b) by sponsoring a website “intentionally designed to blur the line between CAPE PAC and Allen West’s own campaign committee.” The West Campaign even went so far as to wrongly compare CAPE PAC’s website to a fraudulent fundraising letter in MUR 5385 that featured no legal

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<sup>1</sup> Complaint at 4.

<sup>2</sup> Complaint at 4-5.

disclaimer and presented a false IRS registration number.<sup>3</sup> A closer examination of the facts shows that the West Campaign's claim of a violation is not credible.

For one, each page of CAPE PAC's website contained the legal disclaimer required by the Commission, which read:

Paid for by the Coalition of Americans for Political Equality Political Action  
Not authorized by any candidate or candidate's committee  
For more information, visit [www.capepac.org](http://www.capepac.org)

This disclaimer was presented in a clear and conspicuous manner under the Commission's rules, appearing in 12-point font inside a printed box.<sup>4</sup> The presence of this disclaimer alone shows that CAPE PAC did not present violate 2 U.S.C. § 441h(b) by presenting itself as "acting for or on behalf of [a] candidate ... for the purpose of soliciting contributions."

Even so, CAPE PAC went above and beyond its legal obligation by including other plain indications that the site was CAPE PAC's and not a candidate website:

- Each website page featured a statement at the top in 12-point font that the site was "A candidate support website funded by CAPE PAC."<sup>5</sup>
- Each website page featured a statement at the bottom in 12-point font declaring that "Coalition of Americans for Political Equality Political Action Committee is a federal independent expenditure-only political action committee which independently supports Federal candidates who reflect our core values and principles through a variety of activities aimed at influencing the outcome of national elections."<sup>6</sup>
- The website's home and "About Allen" pages featured a statement in the middle of the page inviting individuals to "Help CAPE PAC re-elect Allen West to Congress!"<sup>7</sup>
- The website's donation page featured a statement at the top of the page asking individuals to "JOIN CAPE PAC'S CAMPAIGN TO HELP ELECT ALLEN WEST IN 2012."<sup>8</sup>
- The website's home page featured a statement indicating that "CAPE PAC congratulates Mr. West, his team, supporters, and volunteers for their hard fought victory."<sup>9</sup>

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<sup>3</sup> Complaint at 4. See Fed. Election Comm'n, Matter Under Review 5385 First General Counsel's Report at 10 ("Groundswell's fundraising solicitation did not contain a disclaimer that the communication was not authorized by the Gephardt Committee.").

<sup>4</sup> See 11 C.F.R. § 110.11(c)(1)-(2).

<sup>5</sup> See Complaint at Exhibit B.

<sup>6</sup> See Complaint at Exhibit B.

<sup>7</sup> See Complaint at Exhibit B.

<sup>8</sup> See Complaint at Exhibit C (emphasis in original).

<sup>9</sup> CAPE PAC Allen West Support Website "Home" Page, attached hereto as Attachment A.

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- The website contained an "About CAPE PAC" page that explained CAPE PAC's overall mission and asked site users to "PLEASE BE AWARE THAT WHEN DONATING THROUGH THIS WEBSITE, YOU ARE DONATING TO THE COALITIONS OF AMERICANS FOR POLITICAL EQUALITY (CAPE) PAC AND NOT DONATING TO THE CANDIDATE DIRECTLY. As a non-connected political action committee, we are forbidden from coordinating our activities with the candidates whom we support, which includes sharing any monies raised by our campaign in support of that candidate. If you need any clarification on this point or would like more information, please call us directly at (202) 657-4516."<sup>10</sup>

These multiple statements, placed throughout the website, offer additional evidence that CAPE PAC did not violate 2 U.S.C. § 441h(b) by presenting itself as "acting for or on behalf of [a] candidate ... for the purpose of soliciting contributions."

Faced with these unambiguous statements on CAPE PAC's site, the West Campaign still insists that the site's graphics and general appearance cause a violation. This is absurd. The logos, structure, and color scheme of CAPE PAC's website bear no resemblance to those found on the West Campaign's official website.<sup>11</sup> The West Campaign's actual objection, then, is that the site's use of a stylized logo makes the quality of CAPE PAC's graphical presentation on par with that of a candidate's site. It is not apparent, though, why CAPE PAC or any other non-connected committee must abstain from expressing or supplementing its advocacy through stylized logos and other professional-level graphical features to avoid violating 2 U.S.C. § 441h(b).

The West Campaign's final argument is that CAPE PAC's website violates 2 U.S.C. § 441h(b) because some individuals contributed to CAPE PAC under the mistaken impression that they gave to the West Campaign. CAPE PAC recognizes that some refunds were issued to confused donors. But this donor confusion was not the result of CAPE PAC's fraudulent misrepresentations, as the West Campaign asserts. It was instead the online analogue of a common confusion that occurs with television and radio ads—viewers and listeners may mistake an ad that discusses a candidate for one that is sponsored by a candidate despite the inclusion of legal disclaimers and other indications that the ad was actually funded by an outside group. CAPE PAC must be judged here by its actions with respect to the site, not by others' reactions. And CAPE PAC simply never claimed that its site solicited funds on the West Campaign's behalf. CAPE PAC, in fact, placed legally required disclaimers and multiple other statements that were not legally required, which indicated the site was CAPE PAC's and not a candidate website. CAPE PAC did not therefore violate 2 U.S.C. § 441h(b) by presenting itself as "acting for or on behalf of [a] candidate ... for the purpose of soliciting contributions."

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<sup>10</sup> CAPE PAC Allen West Support Website "About CAPE PAC" Page, attached hereto as Attachment B.

<sup>11</sup> See Attachment C (showing CAPE PAC's red-and-blue website and Allen West's yellow-and-black website).

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CAPE PAC Promoted Federal Candidates through Many Online and Off-Line Efforts

The West Campaign also accused CAPE PAC of violating 2 U.S.C. § 441h(b) by doing "virtually nothing other than fundraise," implying that the PAC did not use its funds for legitimate political activity.<sup>12</sup> This accusation is wrong for two main reasons.

First, the West Campaign ignores the value of CAPE PAC's search ads. Any Internet user who searched for terms associated with Congressman West during the 2012 election cycle was presented with associated search ads whose placement was determined by how much each ad's sponsor paid. CAPE PAC made an effort to keep its search ads, which linked to its site supporting Congressman West, placed below any candidate-sponsored ads but above those sponsored by outside groups opposing him in order to positively influence potential voters. This tactic appears to have had some impact. CAPE PAC's internal user statistics for its Allen West support website show that the site received more than 30,000 purely informational visits. CAPE PAC believes that its ads and site served an important educational function and that without them, more web traffic could have gone to sites that expressed negative information about Congressman West.

Second, the West Campaign ignores CAPE PAC's many online and off-line efforts during the 2012 election cycle to support federal candidates. CAPE PAC has built an extensive online presence, separate and apart from its search ad activities and candidate support websites. CAPE PAC has over 70,000 followers on its Facebook page and 86,000 followers of its Twitter account, which it regularly used to disseminate messages about its favored candidates and interact with conservative voters across the country.<sup>13</sup> CAPE PAC's YouTube account features several unique CAPE PAC-produced videos, which have received over 600,000 views.<sup>14</sup> CAPE PAC mobilized this online following by sending over 2 million emails to targeted voters and building a mobile application to inform conservative voters of their polling locations.<sup>15</sup> Aside from this activity, CAPE PAC also issued numerous press releases and sponsored television ads, radio spots, and auto-dial calls that referenced its favored candidates.<sup>16</sup>

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<sup>12</sup> Complaint at 4-5.

<sup>13</sup> CAPE PAC Facebook Page, <http://www.facebook.com/capepac>; CAPE PAC Twitter Account, <https://twitter.com/capepac>. As an example of its social media activity, CAPE PAC made 375 Facebook posts, which received 348,000 "likes" and 140,390 "shares."

<sup>14</sup> CAPE PAC YouTube Account, <http://www.youtube.com/capepac>. See e.g., CAPE PAC – Bain v. Solyndra FACT v. FICTION (June 25, 2012), available at <http://www.youtube.com/watch?v=h5LaJc0Jkpk&feature=plcp>; CAPE PAC – Michele Bachmann FACT v. FICTION (Sept. 11, 2012), available at [http://www.youtube.com/watch?v=RI\\_u8NBOYIs&feature=plcp](http://www.youtube.com/watch?v=RI_u8NBOYIs&feature=plcp); CAPE PAC Supports Jon Brunning (May 9, 2012), available at <http://www.youtube.com/watch?v=G6EFbvRiKpE&feature=plcp>; CAPE PAC – ObamaCare: FACT v. Fiction (July 3, 2012), available at <http://www.youtube.com/watch?v=4hpiUOpONfA&feature=plcp>.

<sup>15</sup> Press Release, CAPE PAC Launches GOTV Mobile App to Assist Conservative Voters (Nov. 2, 2012), available at <http://www.capepac.org/press-communication/cape-pac-launches-gotv-mobile-app-to-assist-conservative-voters/>.

<sup>16</sup> See, e.g., InfoCision Invoice to CAPE PAC for "Robo-Calls" Referencing Allen West and Byron Donalds, attached hereto as Attachment D.

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In sum, CAPE PAC did much more than fundraise during the 2012 election cycle. CAPE PAC actively deployed its resources for a wide variety of legitimate political activities that promoted federal candidates. CAPE PAC therefore did not violate 2 U.S.C. § 441h(b).

Conclusion

For all of the foregoing reasons, the West Campaign's complaint should be dismissed and the Commission should take no further action related to this Matter.

Respectfully Submitted,



Trevor Potter  
Caplin & Drysdale, Chtd.

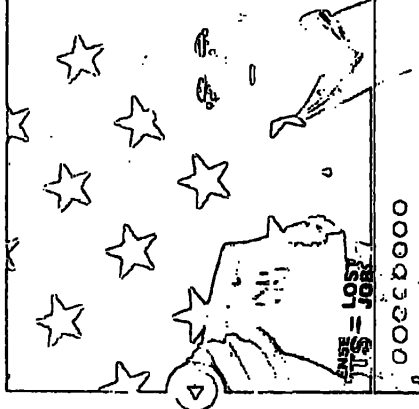


Matthew T. Sanderson  
Caplin & Drysdale, Chtd.

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# **Attachment A**

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**ALLEN ON THE ISSUES**

The primary victory was a great step forward for Congressman West on his way to secure his seat in Washington this November. CAPE PAC congratulates Mr. West, his team, supporters, and volunteers for their hard fought victory. We must continue to spread the word, we cannot let our guard down, the big fight is still ahead of us. Join the conversation on Twitter and Facebook today. Share stories about Congressman West with everyone you know. Help spread the word and defeat the fiction being spread about him daily.

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### ALLEN WEST ON THE ISSUES

Allen believes in protecting social security...

Mr. West cares about the American people. As a Veteran, a Father and a Congressman, he is focused on repairing the damage for U.S. taxpayers. Allen focuses on restoring social security to the independent trust fund account. Social security has been wasted in the general operating account. Unemployment that in America directly affect social security. Can you believe it?

Allen believes in loyalty...

Mr. West is admired by the decorated the Obama administration has shown towards Israel. As one of our biggest allies, Mr. West is working to make things right with Israel. Allen sees Israel as not only our ally, but as a model for democracy in the Middle East. They are a nation with many enemies and need to be able to count on the U.S. to maintain... Read more here

Mr. West can help Florida's unemployed...

Congressman West is frustrated by the current state of Florida. He has witnessed the unemployment rate skyrocket under the watch of Democrats. Allen is ready to curb Government spending, create tax cuts and wants to get Florida citizens back to work. He supports going from the progressive tax to a flat tax system for corporations, businesses and individuals. Help the entire state by clicking here!

A Lieutenant Colonel's View on defense...

As a retired Lieutenant Colonel for the U.S. Army, Mr. West stands firmly on the issue of defending America. Allen is a Veteran who served in Desert Storm and Iraq. He understands and values the giant responsibility America has in keeping its people safe. Mr. West believes in staying on the "offensive", so we are constantly one step ahead... Click to read what he has to say.

Get to know Allen West and where he stands on all of the most important issues. Click now and get to know Allen!

### CONNECT WITH US

Help CAPE PAC re-elect Allen West to Congress. Allen West is a Veteran, a Father and a Congressman. He is focused on repairing the damage for U.S. taxpayers. Allen focuses on restoring social security to the independent trust fund account. Social security has been wasted in the general operating account. Unemployment that in America directly affect social security. Can you believe it?

First Name:

Last Name:

Email:

Zip Code:

CONNECT NOW

or visit our website

## ALLEN WEST for Congress 2012

### SITE NAVIGATION

HOME

ABOUT ALLEN

ABOUT CAPE PAC

THANKS

CONTACT US

### CONNECT WITH US

FACEBOOK

Twitter

YouTube

Email us

Subscribe with a friend

Subscribe our site

Print this page

# Attachment B

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ABOUT THE COALITION OF AMERICANS FOR POLITICAL EQUALITY (CAPE PAC)

## GENERAL INFORMATION

The Coalition of Americans for Political Equality Political Action Committee (CAPE PAC) is a non-profit political organization. We are registered with the Federal Election Committee (FEC) as a non-connected political action committee. We are dedicated to restoring Conservative values in the politicians elected to represent all citizens of the United States of America. Through the utilization of tools in the CAPE PAC advocacy center, our goal is to assist an informed and active citizenry in their drive for change in the political landscape this November and beyond.

## MORE ABOUT CANDIDATE SUPPORT WEBSITES FUNDED BY CAPE PAC

The purpose of this website is to help raise awareness about Allen West's stance on the issues which we believe to be of critical importance to our nation. Our aim is to help educate as many registered, American voters as possible on the strengths and experience of Allen West and to encourage them to GOTV on Election Day. Our candidate support campaigns are focused on a simple – but powerful – two phase approach:

- - Phase 1 - Build the largest base of support for a particular candidate, nationwide, as possible;
- - Phase 2 - Activate that base of supporters to work with our tools to get out the vote for that candidate, and any other candidate running for office that we support in their particular district or state.

These campaigns begin online through Internet advertising and then expand into email, television, and live advocate outbound calling. All of our activities are focused on continuing to spread the word about our candidates and to generate votes come Election Day.

It is our sincere hope that this candidate support website, and all of our campaign activities, will aid in the victory for Conservative principles this November. We are working relentlessly with the hope of restoring greatness in America for generations to come.

## FUNDRAISING

All donations that are received by our organization through this candidate support website, or any associated advertising campaigns run by our organization, are utilized by CAPE PAC to continue our campaign support efforts to raise awareness and to help get out votes to elect Allen West in 2012. The funds that are raised through this website are utilized in our ongoing efforts to see Allen West is elected on November 6th, 2012. PLEASE BE AWARE THAT WHEN DONATING THROUGH THIS WEBSITE, YOU ARE DONATING TO THE COALITION OF AMERICANS FOR POLITICAL EQUALITY (CAPE) PAC AND NOT DONATING TO THE CANDIDATE DIRECTLY. As a non-connected political action committee we are forbidden from coordinating our activities with the candidates whom we support, which includes sharing any monies raised by our campaign in support of that candidate. If you need any clarification on this point or would like more information, please call us directly at (202) 657-4516.

## OUR MISSION

CAPE PAC was formed to provide Conservative Americans with a platform to support candidates for Federal offices in the House of Representatives, United States Senate, and the office of the President of the United States. All candidates endorsed by CAPE PAC are chosen for their Conservative values as well as their stance on the issues which we believe are critical to the ongoing success of America. It is our hope that with the support of millions of Americans like you, CAPE PAC candidates who are elected to their offices will champion the Conservative causes that define America as a beacon of hope for freedom from persecution to billions around the World.

We promote candidates who share our core beliefs: limited government; low taxes; individual responsibility; enforcement of our current immigration policies; fiscal prudence; a strong military; protection of our second amendment rights; and a general belief in American Exceptionalism. CAPE PAC was founded with an eye toward providing our supporters a platform to share their beliefs with the candidates whom will represent their interests in Washington. We are engaged in year-round fundraising efforts to ensure the viability of candidate campaigns against the growing tide of socialism in America – and the vast amounts of money being donated to the candidates on the left side of the aisle.

Our mission is to stand strong against the forces of destruction that are working against our great nation – and growing stronger – every day. For more information about CAPE PAC, please call (202) 657-4516 or visit our main organization website at [www.capepac.org](http://www.capepac.org).

ALLEN WEST  
for Congress 2012

## SITE NAVIGATION

- HOME
- ABOUT US
- CONTACT US
- TERMS & CONDITIONS
- PRIVACY POLICY

## CONNECT WITH US

- FACEBOOK
- EMAIL
- YOUTUBE
- LINKEDIN
- GOOGLE+
- STUMBLEUPON
- 500K

Coalition of Americans for Political Equality Political Action Committee (CAPE PAC) is a non-profit political action committee. We are registered with the Federal Election Committee (FEC) as a non-connected political action committee. We are dedicated to restoring Conservative values in the politicians elected to represent all citizens of the United States of America. Through the utilization of tools in the CAPE PAC advocacy center, our goal is to assist an informed and active citizenry in their drive for change in the political landscape this November and beyond.

Paid for by the Coalition of Americans for Political Equality Political Action Committee

Not authorized for use by candidates or non-affiliated organizations

# **Attachment C**

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# ALLEN WEST for Congress 2012

Allen West campaign website for 2012

ABOUT ALLEN DONATE



## KEEPING ISRAEL SAFE

Mr. West is sickened by the disregard the Obama administration has shown towards Israel. As one of our biggest allies, Mr. West is working to make things right with Israel. Allen sees Israel as not only our ally, but as a model for democracy in the Middle East. They are a nation with many enemies and need to be able to count on the U.S. to maintain the peace. Mr. West believes Israel needs a stronger Congressional representative to stand up against terrorism. Allen stands strongly behind..

MR. WEST AND FOREIGN POLICY

## ALLEN WEST ON THE ISSUES

### Allen believes in protecting social security..

Mr. West cares about the American people. As a Veteran, a Father and a Congressman, he is focused on repairing the harm to U.S. taxpayers. Allen believes in restoring social security to the independent trust fund account. Social security has been raided at the general standing account. To which, "red ink" is Allen's directly affect social security.

Allen believes in security.

## CONNECT WITH US

Help keep PAC and Allen West's campaign website safe. We are currently looking for volunteers to help us protect our website from hackers. If you are interested in helping us protect our website, please contact us at [info@allenwest.com](mailto:info@allenwest.com).

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SIGN UP FOR UPDATES

NAME \* LAST FIRST MIDDLE

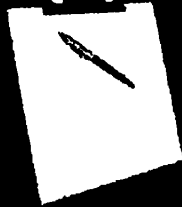
EMAIL ADDRESS \*

SUBMIT

Connect



DONATE



## STAND WITH ALLEN SUPPORT THE FLAT TAX

SIGN THE PETITION TODAY ➔

133,851

FACEBOOK FANS

LIKE

579,510

VIDEO VIEWS

WATCH

Keith G.

DEDICATED TO THE CAMPAIGN

CONTRIBUTE

Bruce D.

SIGNED THE PETITION

SIGN

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